

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DONALD GATER, BARBARA FOLSOM-MCNEAL,
SEQUERNA BANKS, RANDY AVERY,
AND JESSE ROBINSON

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:17-CV-565-DPJ-FKB

CITY OF JACKSON, MISSISSIPPI, ITS
CIVIL SERVICE COMMISSION, AND THE
JACKSON POLICE DEPARTMENT

DEFENDANTS

**ORDER DENYING
MOTION TO STRIKE AMENDED COMPLAINT**

Before the Court is Defendants' Motion to Strike Plaintiffs' Amended Complaint [6]. Defendants contend that the Amended Complaint should be stricken, as Plaintiffs failed to seek leave to amend and failed to include the proposed amended complaint as an exhibit to a motion. *See* [6]. Defendants contend that Plaintiffs filed their Amended Complaint in violation of Fed. R. Civ. P. 15 and L.U.Civ.R. 15. *Id.*

Defendants' arguments would prove correct had Plaintiffs filed their Amended Complaint per the procedure found in Fed. R. Civ. P. 15(a)(2). However, here Plaintiffs amended their Complaint using the procedure found within Fed. R. Civ. P. 15(a)(1)(B), which states:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) **if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading** or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a)(1)(B) (emphasis added). Defendants filed their Answer to the original complaint on July 20, 2017. Plaintiffs filed their Amended Complaint nineteen days later on

August 8, 2017, within the twenty-one days permitted under Fed. R. Civ. P. 15(a)(1)(B). Because Plaintiffs did not need leave of the Court to file the Amended Complaint per the Federal Rules of Civil Procedure, Local Uniform Civil Rule 15 is inapplicable. Accordingly, the Court denies the motion the Motion to Strike [6].

The Court finds that Plaintiff's request for attorneys' fees relating to this motion is unwarranted and therefore denies the same.

IT IS SO ORDERED, this the 17th day of October, 2017.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE